Internal Revenue Service

Department of the Treasury

Washington, DC 20224 **200107040**

Contact Person:

Telephone Number:

In Reference to: T:EP:RA:2

Date: 11/21/00

S.I.N.: 402.08-01

Legend:

Association G =
Annuities F =

Decedent C =
Individual A =
Trust R =
Trust S =
Trust T =
Trust U =

Dear :

This is in response to the ruling request dated March 10, 2000, in which your authorized representative has requested a ruling on your behalf in your capacity as an individual and as trustee of Trust R concerning a rollover of a portion of a single sum distribution from an annuity contract described in section 403(b) of the Internal Revenue into three individual retirement accounts ("IRA").

Your authorized representative has submitted the following facts and representations:

Individual A is the surviving spouse of Decedent C. Individual A is also the sole trustee of Decedent C's trust, Trust R, and personal representative of Decedent C's estate under the terms of Decedent C's will.

Prior to Decedent C's death on November 6, 1999, at the age of 73, he participated in Annuities F, annuity contracts that are offered by Association G and meet the requirement of section 403(b) of the Code. Trust R is beneficiary of 50% of Annuities F; Individual A, as spouse, is beneficiary of 50% of Annuities F. Upon Decedent C's death, Trust R established three trusts, Trust S, of which Individual A is the sole beneficiary, Trust T and Trust U.

In addition to Annuities F, the trustee holds other non-retirement assets in Trust R. These assets will be included in Decedent C's gross estate for federal estate tax purposes. Trust R's agreement provides for the allocation of a specific amount of assets to Trust T and for the allocation of assets to Trust T and Trust U by using a fractional formula. The non-retirement assets are not sufficient to fully fund both Trust T and Trust U, as provided by Trust R. Therefore, Individual A, as trustee of Trust R, will be required to allocate a portion of Annuities F to Trust T or Trust U.

The specific provisions of Trust R are as follows:

A. General Grant. The Trustee shall hold, administer and distribute the remaining principal and undistributed income of the original trust, all property received from Grantor's estate that is to be divided in the same manner as the Original Trust, and any other property received as a result of Grantor's death, to the distributees in this Agreement at such time or times, and in such manner, as the Trustee shall consider appropriate to accomplish the orderly administration of this trust.

B. Fractional Share. If Grantor's spouse survives Grantor, the Trustee shall allocate the assets described in Part III.A to three trusts, to be know as Trust S, Trust T and Trust U, as follows:

1. Special Assets. There shall first be allocated to Trust U:

a. Non-Qualification. Each asset or the proceeds of such asset that does not qualify for the marital deduction under the Federal estate tax;

b. Exempt. The portion of each asset or proceeds of such portion that is exempt from Federal estate tax if it is not receivable by or for the Personal Representative of Grantor's estate;

c. Insurance. Any policies of insurance on the life of another owned by Grantor; and

d. Foreign Death Tax Credit. Each asset or the proceeds of such asset that qualifies for a foreign death tax credit under the Federal estate tax.

2. Trust T. The Trustee shall next distribute to Trust T an amount equal to the balance of Grantor's exemption for purposes of the generation skipping tax ("GST") under section 2631 of the Code. For purposes of this provision, Grantor's remaining GST exemption is an amount equal to Grantor's GST exemption within the meaning of section 2631 reduced by the amount of

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the GST exemption allocated during Grantor's lifetime and allocated by Grantor's Personal Representative to transfers made by Grantor during his life and under other provisions of this Trust Agreement.

3. Trust S. From the remaining assets, the Trustee shall allocate to Trust S the fractional share that is required, after taking into account the unified credit and all other credits and deductions available for Federal estate tax purposes, to reduce the Federal estate tax on Grantor's estate to zero. The fraction shall be determined as of the Federal estate tax valuation date by using the amounts and values as finally determined for Federal estate tax purposes. Provided, however, for purposes of computing the fractional share, the computations to reduce the Federal estate tax on Grantor's estate to zero shall exclude any tax on excess retirement accumulations imposed under section 4980A(d) of the Code.

Trust U. All of the remaining assets not allocated to Trust S shall be allocated to Trust U.

Part IV A. of the Trust Agreement sets out the provisions of Trust S as follows:

1. Income. Commencing with the date of death of Grantor, the Trustee shall distribute the net income from Trust S at least quarterly to or for the benefit of Grantor's spouse, Individual A, during her lifetime. Until the exact amount of Trust S is known, the Trustee shall advance to grantor's spouse amounts equal to the estimated net income of Trust S. The Trustee shall not be liable for any overpayments of such estimated net income to Grantor's spouse and she shall not be required to refund any such overpayments.

2. Principal. The Trustee may, in the Trustee's sole discretion, distribute to or for the benefit of Grantor's spouse so much of the principal of the Trust S as shall be necessary for her support or maintenance in accord with the standard set forth in Part VI.B.

3. Right of Withdrawal. The Trustee shall distribute to Grantor's spouse all or any part of the principal of Trust S as she may direct in writing.

4. Power of Appointment. Grantor's spouse shall have the right at her death to direct the disposition of the remaining principal and undistributed income of Trust S to her estate or to such persons in such manner and amounts as she may appoint by her Will, specifically referring to this power of appointment.

Part VIII M. of the Trust Agreement states the following:

Division of Property and Distributions. In dividing any property into shares or in

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distributing such shares, the Trustee may divide or distribute in cash, in kind, or partly in cash and partly in kind, in such manner as the Trustee shall deem proper and for the purposes of division or distribution. The Trustee may resolve all doubtful questions as to the value of property and may allocate assets among trusts or beneficiaries when an exact division for the distribution or allocation of undivided interests is not practicable or desirable.

Association G will make a single sum distribution, as defined in section 402(d)(4)(A) of the Code, of Trust R's share (50%) of Annuities F to Individual A, as trustee of Trust R. Individual A, as trustee, will use a portion of the proceeds of the distribution to fund Trust S and use the balance of the proceeds of the distribution and other non-retirement assets to fund Trust T and Trust U. Individual A, as the surviving spouse, will withdraw from Trust S the portion of the Annuities F's proceeds allocated to Trust S pursuant to the terms of the Trust R's document and roll over those proceeds into three IRAs, each of which is established in Individual A's name and each of which constitutes an eligible retirement plan within the meaning of 403(b)(8)(A). These steps will be accomplished prior to December 31, 2000.

Once Association G makes the single sum distribution to Individual A, as trustee, the roll over will occur within 60 days. This step and the previous steps will be accomplished by Individual A, as trustee and as surviving spouse, directing Association G in writing to transfer the funds from Annuities F's account to Individual A's IRAs.

Association G will also issue a single sum distribution of the other 50% of Annuities F's account to Individual A, as beneficiary of said share. Individual A, as beneficiary and surviving spouse, intends to roll over the distributed amount into the three IRAs established in her name. Such rollover will occur within 60 days of the single sum distribution to Individual A, pursuant to section 402(c)(3) of the Code.

Prior to the proposed distributions, Association G will distribute to Individual A the amount of any distribution required to be made under section 401(a)(9) of the Code for the tax year in which such single sum distribution is made.

Based on these facts and representations, a ruling is requested that Individual A, as the surviving spouse, may roll over tax free a portion of the single sum distribution from Decedent C's Annuities F in Trust R to the three IRAs established in Individual A's name.

Section 403(b)(8)(A) of the Code provides, in relevant part, that if any portion of the balance to the credit of an employee in an annuity contract described in section 403(b)(1) of the Code is distributed to the employee in an eligible rollover distribution, the employee transfers any portion of such distribution to an individual retirement plan, then such distribution (to the extent so transferred) will not be includible in the gross income of the employee in the taxable year that the distribution is paid.

Section 403(b)(8)(B) of the Code provides that rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of section 403(b)(8)(A).

Section 402(c)(1) of the Code provides, in general, that if any portion of an eligible rollover distribution from a qualified trust is transferred into an eligible retirement plan, the portion of the distributions so transferred shall not be includible in gross income in the taxable year in which paid.

Section 402(c)(4) of the Code defines an "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of an employee in a qualified trust (which includes a section 403(b)(1) annuity contract), except that such term will not include the following distributions:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made --

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more, and

(B) any distribution to the extent such distribution is required under section 401(a)(9).

Section 402(c)(3) of the Code generally provides that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 1.403(b)-2, Q&A-1 of the Income Tax Regulations ("Regulations") defines an "eligible retirement plan" for purposes of section 403(b)(8) of the Code as another section 403(b) annuity or an Individual retirement plan as described under section 1.402(c)-2, Q&A-2 of the Regulations but does not include a qualified retirement plan as defined under section 1.402(c)-2, Q&A-2 of the Regulations.

Section 1.402(c)-2, Q&A-2 of the Regulations defines an Individual retirement plan as an Individual retirement account described in section 408(a) of the Code or an Individual retirement annuity (other than an endowment contract) described in section 408(b) of the Code.

Section 402(c)(9) of the Code provides that if a distribution attributable to an employee is paid to the spouse of such employee after the employee's death, section 402(c) of the Code will apply to such distribution in the same manner as if the spouse were the employee except that the spouse may transfer such distribution only to an Individual retirement account described under section 408(a) of the Code or an Individual retirement annuity described under section 408(b) of the Code.

Section 1.402(c)-2, Q&A-12 of the Regulations provides that if a distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) of the Code applies to the distribution in the same manner as if the spouse were the employee. Q&A-12 further provides that only IRAs described in sections 408(a) and (b) of the Code are treated as eligible retirement plans for purposes of spousal rollovers.

Section 1.403(b)-2, Q&A-1 of the Regulations provides that the rules with respect to rollovers in section 402(c)(9) of the Code and section 1.402(c)-2, Q&A-12 of the Regulations also apply to eligible rollover distributions from section 403(b) annuities.

Generally, if a decedent's 403(b) annuity contract passes through a third party, e.g. a trust, and then is distributed to the decedent's surviving spouse, the surviving spouse will be treated as acquiring the distribution from the third party and not from the decedent. As a result, the surviving spouse will not be eligible to roll over the retirement proceeds into his or her own IRA.

However, in this case, a trust is the beneficiary of the section 403(b) annuity contract and the surviving spouse is the sole and surviving trustee. Under the facts presented, as sole trustee, Individual A has uncontrolled discretion under the terms of the trust with respect to the allocation of the Annuities F proceeds to Trust S. Under the terms of Subtrust S, Individual A has unlimited power to demand that any part or all of the trust principal be paid to her as she deems fit. Subtrust S provides that all of the net income will be distributed, at least quarterly, to or for the benefit of Individual A. Finally, Subtrust S gives Individual A an unlimited power to appoint the remaining principal and undistributed income by her will. Under these circumstances, the general rule described above shall not apply. Therefore, for purposes of section 403(b)(8) of the Code, the Internal Revenue Service will treat the surviving spouse as having acquired the section 403(b) distribution from the decedent and not the trust.

Based on the foregoing, we conclude, with respect to your ruling request, that Individual A, as the surviving spouse, is permitted to roll over tax free a portion of the single sum distribution from Decedent C's Annuities F in Trust R to the three IRAs established in

Individual A's name.

This ruling is based on the assumption that the section 403(b) annuity contracts maintained by Individual A's employer satisfy the requirements of section 403(b) of the Code at all relevant times. In addition, it assumes that the IRAs established by Individual B to receive the amounts transferred from the two section 403(b) annuity contracts meet the relevant requirements of section 408 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

Joyce E. Floyd, Manager
Employee Plans Technical Group 2
Tax Exempt and Government
Entities Division

Enclosures:
Deleted copy of the letter
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